

## SENATE BILL No. 8

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-10-2; IC 35-33-8.

**Synopsis:** Nonprofit bail funding. Allows a charitable organization to pay bail on behalf of a defendant if the organization meets certain criteria. Exempts from the certification requirement a charitable organization that pays bail for not more than two individuals in any 180 day period. Provides that if money or bonds have been set, bail by surety may be substituted for the money or bonds at any time before a breach. Prohibits the state and a political subdivision from: (1) posting bail for any person; or (2) providing a grant to any entity that provides funding for any person. Requires a court to apply the bail to certain court costs. Prohibits an entity that has received a grant from the state or a political subdivision from posting bail for any person or providing a grant, directly or indirectly, to an entity that posts bail for any person.

**Effective:** Upon passage; July 1, 2022.

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**Freeman, Walker K, Crider,  
Young M, Sandlin**

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January 4, 2022, read first time and referred to Committee on Corrections and Criminal Law.

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Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

## SENATE BILL No. 8

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 27-10-2-4 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. Every surety for
- 3 the release of a person on bail shall be qualified as:
- 4 (1) an insurer as defined and meeting the qualifications prescribed
- 5 in IC 27-1-5-1, and represented by a bail agent as defined in and
- 6 meeting the qualifications prescribed in this article; ~~or~~
- 7 (2) a person who:
- 8 (A) has reached the age of eighteen (18) years;
- 9 (B) is a citizen of the United States;
- 10 (C) has been a bona fide resident of Indiana for at least one (1)
- 11 year immediately preceding the execution of the bond;
- 12 (D) is related to the person for whom release on bail is sought
- 13 within the third degree of affinity; and
- 14 (E) owns real or tangible personal property in Indiana with a
- 15 net asset value that is acceptable to the proper authority
- 16 approving the bond; **or**
- 17 **(3) a charitable bail organization (as defined in section 4.5(a))**



of this chapter), if the charitable bail organization:

(A) is certified by the commissioner; or

(B) posts bail for not more than two (2) individuals in a one hundred eighty (180) day period.

SECTION 2. IC 27-10-2-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. (a) As used in this section, "charitable bail organization" means a person that:

(1) solicits or accepts donations from the public; and

(2) agrees to deposit money for bail for another person.

(b) For purposes of section 4 of this chapter, the commissioner may certify a person as a charitable bail organization if the person:

(1) is a nonprofit charitable organization under Section 501(c)(3) of the Internal Revenue Code;

(2) is currently registered to do business in Indiana;

(3) is located in Indiana; and

(4) exists for the purpose of depositing cash bail of two thousand dollars (\$2,000) or less for an indigent person charged with a misdemeanor.

(c) A person may apply for certification under this section in accordance with rules adopted under this section.

(d) The commissioner shall certify a person as a charitable bail organization if the:

(1) person pays an application fee of three hundred dollars (\$300);

(2) person meets the requirements of this section; and

(3) person, including an officer or director of the person, has not engaged in conduct that:

(A) constitutes fraud, dishonesty, or deception;

(B) constitutes malfeasance, misfeasance, or nonfeasance in dealing with money; or

(C) resulted in the suspension or revocation of a previous certification.

(e) A charitable bail certification is valid for two (2) years from the date of issuance and may be renewed upon payment of a renewal fee of three hundred dollars (\$300). If a person applies for renewal before the expiration of the existing certification, the existing certification remains valid until the commissioner renews the certification, or until five (5) days after the commissioner denies the application for renewal. A person is entitled to renewal unless the commissioner denies the application for renewal under subsection (f).



(f) The commissioner may suspend, revoke, or refuse to renew a certification if the commissioner finds that the:

(1) person no longer qualifies as a charitable bail organization under this section, or does not otherwise meet the requirements of this section;

(2) person violated a requirement under subsection (g); or

(3) person, including an officer or director of the person, has engaged in conduct that constitutes:

(A) fraud, dishonesty, or deception; or

(B) malfeasance, misfeasance, or nonfeasance in dealing with money.

(g) A charitable bail organization must comply with all of the following:

(1) If the charitable bail organization pays, or intends to pay, bail for more than two (2) individuals in any one hundred eighty (180) day period, the charitable bail organization must be:

(A) certified by the commissioner under this section; and

(B) represented by a bail agent;

before soliciting or accepting donations for bail for another person and before depositing money for bail for another person.

(2) If the charitable bail organization is not certified under this section, the charitable bail organization may pay bail for not more than two (2) individuals in any one hundred eighty (180) day period.

(3) A charitable bail organization may only deposit cash bail of two thousand dollars (\$2,000) or less for an indigent person charged with a misdemeanor. A charitable bail organization may not pay bail for a defendant charged with a felony, even if the defendant is also charged with a misdemeanor.

(4) A charitable bail organization may not execute a surety bond for a defendant.

(5) A charitable bail organization shall, before paying bail for an individual, execute the agreement described in IC 35-33-8-3.2.

(6) A charitable bail organization and the court shall comply with the requirements of IC 35-33-8-3.2(g).

(7) A charitable bail organization may not charge a premium or receive any consideration for acting as a charitable bail organization.

(h) If an individual fails to appear the bail shall be forfeited in



the manner described in IC 35-33-8-7 and the court shall take the steps described in 35-33-8-8.

(i) All fees collected under this section shall be deposited in the state general fund.

(j) The commissioner shall adopt rules under IC 4-22-2 to implement this section.

SECTION 3. IC 27-10-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. If money or bonds have been ~~deposited, set,~~ bail by sureties may be substituted ~~therefor~~ at any time before a breach of the undertaking, and the official taking the new bail shall make an order that the money or bonds be refunded to the person depositing the ~~same money or bonds~~ and ~~they~~ **the money or bonds** shall be refunded accordingly and the original undertakings shall be ~~cancelled;~~ **canceled.**

SECTION 4. IC 35-33-8-0.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.6. (a) Neither the state nor a political subdivision (as defined in IC 36-1-2-13) may:**

(1) post bail for any person; or

(2) provide a grant or other funding to an entity that posts bail for any person.

**(b) No entity that has received a grant or funding from the state or a political subdivision (as defined in IC 36-1-2-13) may:**

(1) post bail for any person; or

(2) provide a grant or other funding, directly or through another entity, to an entity that posts bail for any person.

SECTION 5. IC 35-33-8-3.2, AS AMENDED BY P.L.161-2018, SECTION 115, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3.2. (a) After considering the results of the Indiana pretrial risk assessment system (if available), other relevant factors, and bail guidelines described in section 3.8 of this chapter, a court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

(1) Require the defendant to:

(A) execute a bail bond with sufficient solvent sureties;

(B) deposit cash or securities in an amount equal to the bail;

(C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;



(D) post a real estate bond; or

(E) perform any combination of the requirements described in clauses (A) through (D).

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute:

(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Except as provided in section 3.6 of this chapter, require the defendant to refrain from any direct or indirect contact with an individual and, if the defendant has been charged with an offense under IC 35-46-3, any animal belonging to the individual,



including if the defendant has not been released from lawful detention.

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Require a defendant charged with an offense under IC 35-46-3 to refrain from owning, harboring, or training an animal.

(9) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under



1 this subsection to the board of trustees of the Indiana public retirement  
 2 system for deposit in the special death benefit fund. The fee required  
 3 by subdivision (2) is in addition to the administrative fee retained under  
 4 subsection (a)(2).

5 (e) With the approval of the clerk of the court, the county sheriff  
 6 may collect the bail posted under this section. The county sheriff shall  
 7 remit the bail to the clerk of the court by the following business day  
 8 and remit monthly the five dollar (\$5) special death benefit fee to the  
 9 county auditor.

10 (f) When a court imposes a condition of bail described in subsection  
 11 (a)(4):

12 (1) the clerk of the court shall comply with IC 5-2-9; and

13 (2) the prosecuting attorney shall file a confidential form  
 14 prescribed or approved by the office of judicial administration  
 15 with the clerk.

16 **(g) This subsection applies only to bail paid by a charitable bail**  
 17 **organization as defined by IC 27-10-2-4.5(a). If bail is paid by a**  
 18 **charitable bail organization, the court shall:**

19 **(1) require the charitable bail organization to execute an**  
 20 **agreement requiring the court to retain all or part of the bail**  
 21 **to pay publically paid costs of representation and fines, costs,**  
 22 **fees, probation fees, and restitution that the court has ordered**  
 23 **the defendant to pay; and**

24 **(2) retain all or part of the bail to pay publically paid costs of**  
 25 **representation and fines, costs, fees, probation fees, and**  
 26 **restitution that the court has ordered the defendant to pay.**

27 **SECTION 6. An emergency is declared for this act.**

